

STATE OF CALIFORNIA
DEPARTMENT OF FOOD AND AGRICULTURE
MARKETING BRANCH



CALIFORNIA PISTACHIO
MARKETING AGREEMENT

Effective July 1, 1980
Incorporating Amendments Through January 12, 2000

CALIFORNIA PISTACHIO MARKETING AGREEMENT

ARTICLE I

STATEMENT OF AGREEMENT

WHEREAS, it is provided in Section 58745 of the California Marketing Act, being Chapter 1, Part 2, Division 21 of the Food and Agricultural Code of the State of California, as follows:

58745. In order to effectuate the declared policy of this chapter, the Department may also, after due notice and opportunity for hearing, enter into marketing agreements with processors, distributors, producers and others that are engaged in the handling of any commodity, which regulate the preparation for market and handing of such commodity. Such marketing agreements are binding upon the signatories to the agreements exclusively.

WHEREAS, in order to tend to effectuate the declared policy and purposes of said Act, the parties hereto desire to enter into a marketing agreement under the provisions of said Act. The purpose of this Marketing Agreement is to declare the commingling of Naturally Opened Pistachios with Artificially Opened Pistachios, (and) the bleaching or other means of removing shell stains on Pistachios, and the shipment of Pistachio inventory to export markets that has not been tested for aflatoxin levels and certified to the standards of the importing country for aflatoxin to be unfair practices by the Signatories to this Agreement. This Agreement shall apply to all Uncommitted and Unshipped Signatory Inventory as of the effective date of this Agreement, as well as new crop Pistachios harvested by the Signatories beginning with the 1994 crop. (Amended 09/07/1999)

NOW, THEREFORE, the parties agree as follows:

ARTICLE II

DEFINITIONS

Section A. DEFINITION OF TERMS. For the purposes of this Marketing Agreement, the following terms shall have the following meanings. These definitions apply only to the Signatories to this Agreement:

1. "Act" means the California Marketing Act, being Chapter 1 of Part 2, Division 21 of the Food and Agricultural Code.
2. "California Pistachio Marketing Agreement" or "Agreement" refers to this Marketing Agreement, directly affecting processors and Handlers of California Pistachios, which is issued by the Department pursuant to the provisions of the Marketing Act.

3. “Artificially Opened Pistachios” are Pistachios that do not open naturally on the tree prior to harvest or in the normal drying process. Artificially opening includes the process of cracking the shell whether by hand or machine.

4. “Books and Records” means any ledgers, accounts, contracts, memoranda, correspondence, bills of sale, receipts, shipping documents, computerized data, and other writings, whether handwritten, typewritten, printed, photostated, copied or electronically stored.

5. “California Pistachio Board”, “Pistachio Board” and “Board” are synonymous and mean the Board established pursuant to the provisions of Article III of this Agreement.

6. “Committed Pistachios” refers to Signatory Pistachios in Processor or Handler inventory that are committed to sale upon effectuation of this Agreement.

7. “Distributor” means any person that engages in the operation of selling, marketing, or distributing any Pistachios whether as owner, agent, employee, broker, or otherwise.

8. “Fiscal Year” and “Marketing Season” are synonymous and mean the period beginning September 1 of any year and extending through August 31 of the following year.

9. “Grower” means any Person who produces Pistachios for commercial sale and who has a proprietary interest therein.

10. “Handler” means any person that is engaged within this State as a Distributor in the business of distributing Pistachios. This definition does not include a Retailer except to the extent that such Person is engaged as a Distributor.

11. “Naturally Opened Pistachios” refers to those Pistachios that open naturally on the tree prior to harvest or in the normal drying process.

12. “Person” means an individual, partnership, firm, corporation, association, or any other business unit.

13. “Pistachios” means any variety of Pistachios processed, in whole or in part, and/or packaged, in the State of California, including Pistachios delivered to a Processor for processing into any pistachio product.

14. “Processor” means any person who takes possession of Pistachios from Growers, and who hulls and dries said Pistachios.

15. “Retailer” means any person that purchases or acquires Pistachios for resale at retail to the general public for consumption off the premises. Such person is also included within the definition of Distributor, to the extent that such person engages in the business of a Distributor.

16. “Seasonal Regulations” refers to marketing regulations that are applicable to this Marketing Agreement and are made effective by the Department pursuant to Article 19 of the Act.

17. “Department” means the Department of Food and Agriculture of the State of California.
18. “Signatory” means any person who has signed this Agreement.
19. “Signatory Pistachios” refers to any Pistachios, owned, whether in part or whole, by a Signatory to this Agreement.
20. “Uncommitted Pistachios” refers to Signatory Pistachios in Processor or Handler inventory that are not committed to sale upon effectuation of this Agreement.
21. “Unshipped Pistachios” refers to Signatory Committed or Uncommitted Pistachios that have not left the control of the Processor or Handler.
22. “Aflatoxin” is a mycotoxin produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus*. Aflatoxin is a naturally occurring mold which can be spread in improperly processed and stored nuts, dried fruits and grains. (Amended 09/07/1999)
23. “Certification” is documentation confirming compliance with approved inspection sampling protocols and proscribed aflatoxin tolerance levels as established by the importing country. (Amended 09/07/1999)

ARTICLE III

CALIFORNIA PISTACHIO BOARD

Section A. ESTABLISHMENT AND MEMBERSHIP.

1. To assist the Department in the administration of this Agreement, an Advisory board, to be known as the California Pistachio Board, is hereby established. The Board shall consist of seven (7) processors representing California at large. (Amended effective 9/15/95)
2. There shall be one (1) alternate member on the Board to represent each member. In the absence of the member, the alternate member may exercise all duties and powers accorded to the member.
3. The members and their alternates shall be appointed by the Department from the Signatories to this Agreement, or representatives thereof. (Amended effective 9/15/95)
4. A Signatory of record shall not be represented on the Board in more than one (1) voting position.

5. In addition to the members and alternate members, and upon the recommendation of the Board, the Department may appoint one (1) member and one (1) alternate member to the Board to represent the general public. The public member and alternate shall not be affiliated with any organization engaged in the production, handling, or marketing of Pistachios and shall have all the rights and privileges, including voting, of any other member of the Board.

6. The term of office of the members and alternates of the Board shall be two (2) years beginning August 1 and continuing at the pleasure of the Department through July 31 of the second year following their appointment, or until their successors have been appointed and have qualified. The initial term of Board members shall be from the effective date of this Agreement until July 31, 1996.

Section B. APPOINTMENT PROCEDURE FOR MEMBERSHIP TO THE BOARD

Nominations of Processors eligible to serve initially on the Board shall be received at the public hearing held to consider the Marketing Agreement. Nomination of the initial Handler member and alternate shall be made by the Board should one or more Handlers become Signatories to the Agreement. Board members and alternates shall be appointed by the Department.

Subsequent to appointment of initial Board members, procedures for nomination of members shall be recommended by the Board, and approved by the Department.

Section C. QUALIFICATION AFTER APPOINTMENT

A person selected and appointed by the Department as a member or alternate of the Board shall qualify by filing with the Department a written acceptance and/or such other documents as may be required.

Section D. VACANCIES

To fill any vacancies occasioned by the failure of any person appointed as a member or alternate of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate, a successor shall be appointed from persons remaining on the list of eligible nominees. In the event no nominees remain on such list, the remaining members of the Board may nominate qualified persons eligible for appointment by the Department to fill such vacancies pursuant to the procedures to be adopted under Section B above.

Section E. DUTIES AND POWERS OF BOARD

The Board shall have the following duties, which may be exercised subject to the approval of the Department:

1. To administer the provisions of this Agreement;
2. To recommend to the Department rules and regulations relating to this Agreement;

3. To receive and report to the Department complaints of violations of this Agreement;
4. To recommend to the Department amendments to this Agreement;
5. To assist the Department in levying and collecting of assessments from signatories to cover expenses incurred by the Board and the Department in the administration of this Agreement;
6. To assist the Department in collection of such information and data as may be deemed necessary to the proper administration of this Agreement and the Act;
7. To select a chair from its membership and to select such other officers recommended to the Department for adoption as the Board may deem advisable;
8. To keep minutes, books and records which will clearly reflect all of its acts and transactions. Such minutes, books and records shall at all times be subject to examination by the Department or duly authorized representatives, and to provide to the Department copies of the minutes of all meetings duly certified by an authorized officer of the Board;
9. To employ such employees as it may deem necessary and to determine the compensation and define the duties of such employees;
10. To recommend to the Department such committees as may be deemed necessary to assist the Board and the Department in performing the duties authorized pursuant to this Agreement. All Committee actions shall be recommendations to the Advisory Board, subject to approval by the Department;
11. To receive, invest, borrow, and disburse funds pursuant to the provisions of Article 10 of the California Marketing Act; and
12. To comply with all applicable conflict of interest laws.

Section F. EXPENSES OF MEMBERS OF THE BOARD

The members and alternates of the Board may be reimbursed for expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers hereunder.

Section G. PROCEDURE FOR BOARD

1. If the public member position is not filled, a quorum of the Board shall consist of four (4) eligible voting members or alternates. If the public member position is filled, a quorum of the Board shall consist of five (5) eligible voting members or alternates.(Amended effective 9/15/95)
2. Any action taken by the Board shall require the concurring vote of a majority of the eligible voting members or alternates present.

3. Any question before the Board which would, in the opinion of the Board member, result in a conflict of interest on his or her part shall be the basis of the member disqualifying himself or herself from voting on such a question.

Section H. LIMITATION OF LIABILITY OF BOARD

The members or alternate members of the Pistachio Board, including employees of the Board, are not responsible individually in any way whatsoever to any person for liability on any contract or agreement of the Advisory Board approved by the Department.

ARTICLE IV

BOOKS AND RECORDS

Section A. BOOKS AND RECORDS

Signatories to this Agreement shall maintain Books and Records reflecting their operations and shall furnish to the Department or its duly authorized or designated representatives such Books and Records as may, from time to time, be requested relating to their operations under this Agreement, and shall permit the inspection, during normal business hours, by said Department or authorized representatives of such portions of their Books and Records as relate to operations that are the subject of this Agreement.

Section B. CONFIDENTIAL INFORMATION

Any information obtained by any persons pursuant to the provisions of this Article shall be confidential and shall not be disclosed by him/her to any other person, save to a person with like right to obtain the same, or any attorney employed by the Department to give legal advice thereupon, or as necessary in judicial or administrative proceedings.

ARTICLE V

UNFAIR TRADE PRACTICES: BLENDING, BLEACHING, AND SALES OF PISTACHIOS WITHOUT AFLATOXIN CERTIFICATION

Section A. UNFAIR TRADE PRACTICES AND THE PRACTICE OF SHIPPING PISTACHIOS FOR EXPORT WITHOUT AFLATOXIN CERTIFICATION

Following a hearing on this Marketing Agreement, the Department has found that the practice of commingling Artificially Opened Pistachios with Naturally Opened Pistachios, (and) the practice of bleaching or otherwise treating Pistachios with chemicals to remove shell stains, and the practice of

shipping Pistachios for export without aflatoxin certification are unfair trade practices and detrimental to the effectuation of the declared purposes of the Act. The provisions of this Agreement apply to all (Uncommitted Pistachios and Unshipped Pistachios in inventory as of the effective date of this Agreement, as well as) Pistachios harvested (beginning with the 1994 Marketing Season and) after the effective date of this Marketing Agreement. The following provisions are designed to correct such unfair trade practices: (Amended 09/07/1999)

The following provisions are designed to correct such unfair trade practices:

1. Signatories shall not commingle or cause to be commingled Artificially Opened Pistachios with Naturally Opened Pistachios, regardless of whether the Pistachios are intended for sale to a purchaser located inside or outside of the State of California.

2. Signatories who package Pistachios, or cause Pistachios to be packaged, shall conspicuously label, or cause to be labeled, all consumer packages of artificially opened Pistachios to indicate that they contain “artificially opened Pistachios”. Similarly, all consumer packages of naturally opened Pistachios shall be conspicuously labeled to indicate that they contain “naturally opened Pistachios”. Such labeling requirements shall also apply to Pistachios sold in bulk containers and cartons at wholesale or retail. Such labeling requirements shall become effective ninety (90) days after the effective date of this Marketing Agreement.
(Amended effective June 6, 1995)

3. No Signatory shall cause Pistachios to be bleached or otherwise treated, directly or indirectly, with hydrogen peroxide, or other chemicals or other products, to remove shell stains.

4. This Agreement is not intended to limit the Processor’s capability to achieve potable water quality to levels acceptable to the American Water Works Association in his or her processing facility. Neither does this Agreement intend to limit the use of sodium chloride in the processing of Pistachios.

5. No Signatory shall ship Pistachios to export markets without an aflatoxin certificate for the subject Pistachios. The Pistachio Board shall prescribe the protocol required to do aflatoxin testing, and shall inform processors of the levels of aflatoxin that are permissible in Pistachios in various export markets. Processors will be required to report to the Board on the levels of aflatoxin in export shipments. Bulk containers and cartons sold to export must be labeled with a Board approved aflatoxin certification. (Amended 07/09/1999)

Section B. SEASONAL REGULATIONS

The Pistachio Board may, without prior notice or hearing, recommend, and the Department may adopt, such Seasonal Regulations as may be necessary to carry out the purposes and attain the objectives of this Agreement. Seasonal Regulations must be established prior to the Marketing Season, except for the 1994 Marketing Season, and shall be effective during the Marketing Season. Seasonal Regulations may not be modified except in response to changing economic or marketing conditions as enumerated in Article 19 of the Act.

Notice of any such Seasonal Regulations, shall be given to all Signatories to this Agreement in the manner and within the time as specified in Article 6 and Article 16 of the Act.

Section C. RANDOM VERIFICATION AUDITS

All Pistachios of Signatories that are processed shall be subject to random verification audits by the California Pistachio Board or its agents to ensure compliance with the regulations established by this Agreement. The frequency and manner of these verification audits shall be recommended by the Board and approved by the Department.

Section D. AGENCY AUTHORIZED TO CONDUCT RANDOM VERIFICATION AUDITS

The Advisory Board is authorized to recommend to the Department, for approval, suitable arrangements for the conducting of random verification audits on lots of Pistachios by an established and experienced agency, either governmental or private.

Section E. COMPLIANCE

1. The Board may arrange for the issuance of audit certificates or other such evidence of compliance as the Board deems necessary and proper to ensure compliance with this Marketing Agreement and any regulations issued and made effective by the Department pursuant to this Marketing Agreement. The Board may require all Signatories to register all brands under which inventory of affected Pistachios will be sold.

2. No Signatory shall possess, store, market, handle or transport any Pistachios in violation of this Agreement or regulations made effective pursuant to this Agreement. No Signatory shall, directly or indirectly, do any act or cause others to do any act in violation of the foregoing unfair practices or the other terms of this Marketing Agreement.

3. The Department through duly authorized representatives or agents shall have access, solely for the purposes of investigating possible violations of this Agreement, to the Books and Records of Signatories, and shall have, at all times, free and unimpeded access to all buildings, yards, warehouses and transportation facilities and other places in which Pistachios are processed, stored, marketed, handled or transported. All information obtained shall be confidential and shall not be disclosed except when necessary in a judicial or administrative proceeding.

4. Any Signatory who violates the provisions of this Agreement, or orders or regulations issued pursuant hereto, shall be subject to the penalties prescribed in Article 21 of the Act.

SECTION F. DISSEMINATION OF INFORMATION

The Board is authorized to disseminate information to appropriate governmental and private entities regarding the regulated unfair trade practices, and the effects of the California Marketing Agreement on these unfair trade practices. (Amended 9/28/98)

ARTICLE VI

UNFAIR TRADE PRACTICES EDUCATION

The Board is authorized to implement an educational program which is designed to acquaint interested persons with the unfair trade practices regulated by this Agreement, and the effect of the Agreement on these practices and the marketing of Pistachios.
(Amended 07/09/1999)

ARTICLE VII

BUDGETS AND ASSESSMENTS

Section A. BUDGETS

For each Fiscal Year, the Board shall recommend to the Department a budget or budgets to cover proposed expenditures for the administration of this Agreement and for the activities authorized hereunder. Upon approval of such budget or budgets, the Board may incur expenditures in accordance therewith.

Section B. ASSESSMENTS

Rate of Assessment. The assessment shall be one tenth of one cent (\$0.001) per pound on all Pistachios processed within the State of California during the 1994-95 Marketing Season by a Signatory to this Agreement. Thereafter, the assessment shall not exceed two tenths of one cent (\$0.002) per pound on all Pistachios processed in California in any Marketing Season.

Section C. PAYMENT AND COLLECTION OF ASSESSMENTS

1. Any assessment levied pursuant to this Agreement shall constitute a personal debt of every Processor so assessed and shall be due and payable to the Department at such times and in such a manner as the Department may prescribe.

2. In the event that Handlers become Signatories to the Agreement, they shall pay an annual non-refundable fee to be recommended by the Advisory Board and approved by the Department and be due and payable to the Department at such times and in such manner as the Department may prescribe. The level of this handler fee will be established in an amount to defray the necessary expenses of including the Handlers as Signatories to this Agreement and for the random verification and audit process.

a. In the event a Processor is a Signatory, the Processor shall pay assessments directly on all Pistachios which he or she processes, including Pistachios processed at production facilities which he or she may own or in which he or she may have a financial interest.

b. No assessment shall be paid on any Pistachios, with the exception of the Handler fees, if another Signatory has already paid an assessment on such Pistachios.

Section D. DISPOSITION OF FUNDS

1. Any monies collected by the Department or the Board pursuant to the provisions of this Agreement shall be deposited in accordance with the provisions of the Act, allocated to this Agreement and disbursed by the Department or the Board only for the necessary expenses incurred or approved by the Department with respect to this Agreement. Said disbursements or expenditures of money so deposited shall be in accordance with rules and regulations prescribed by the Department in accordance with the provisions of this Agreement or the Act.

2. Any monies remaining from assessments, collected pursuant to this Agreement, upon recommendation by the Board and approval by the Department, may be refunded at the close of any Marketing Season upon a pro rata basis to all Signatories from whom such assessments were collected; or such monies, upon recommendation of the Advisory Board and approval by the Department, may be carried over in reserve into the next succeeding Marketing Season whenever the Department finds that such monies may be required to assist in defraying costs of the Advisory Board. Handler fees are non-refundable.

3. Upon termination of this Agreement, any and all monies remaining and not required by the Department to defray the expenses of this Agreement, including termination costs, shall be returned by the Department to those Signatories from whom such assessments were collected upon a pro rata basis. If the Department finds that the amounts so returnable are so small as to make impractical the computations and remitting of such pro rata refunds to such persons, the Department may use such funds to defray the expenses incurred by it in the formulation, issuance, administration or enforcement of any subsequent marketing agreement or marketing order covering the purposes set forth in this Agreement. Handler fees are non-refundable.

In the absence of the use of such funds for such purpose, the disposition of the funds shall be as further provided in Section 58938 of the Act.

ARTICLE VIII

APPEALS

Section A. APPEALS

Any Signatory to this Agreement may petition the Department to review any order, recommendation or action of the Board approved by the Department. Any such petition must be filed in writing and set forth the facts upon which it is based.

Section B. EFFECT OF APPEAL

Pending the disposition of any appeal set forth in Section A of this Article, the parties shall abide by the action of the Board, approved by the Department. The Department shall, if the facts stated show reasonable and valid ground, grant any such petition.

ARTICLE IX

IMMUNITIES

Section A. ANTITRUST LAWS

In any civil or criminal action or proceeding for violation of the Cartwright Act, the Unfair Trade Practices Act, or any rule of statutory or common law against monopolies or in restraint of trade, proof that the act complained of was done in compliance with the provisions of this Agreement and in furtherance of the purposes and provisions of the Act shall be a complete defense to such action or proceeding, to the extent set forth in the Act.

Section B. DURATION OF IMMUNITIES

The benefits, privileges, and immunities conferred by virtue of the provisions of this Marketing Agreement, shall cease upon its termination, except with respect to acts done under and during the time the provisions hereof are in force and effect.

ARTICLE X

PARTICIPATION

Section A. NEW SIGNATORIES AND PARTICIPATION

Processors and Handlers may become Signatories to this Agreement. When this Agreement has been made effective by the Department, and except as provided in Article X hereof, "Compliance of Contracting Parties", any Processor or Handler may become a party to this Agreement during the period of time that the Department designates as the initial assent period by filing with the Department a properly executed copy of this Agreement and thereupon shall immediately become subject to the rights, duties, privileges, and immunities provided for in this Agreement. Beginning with the 1995-96 Marketing Season, Processors and Handlers may become Signatories to the Agreement by filing with the Department a properly executed copy of this Agreement, not later than July 1 of any year. The Agreement will apply to the new Signatories effective immediately upon filing with the Department. During the period March 26, 1996 through April 25, 1996, Processors may become Signatories to the Agreement by filing with the Department a properly executed copy of this Agreement. The Agreement will apply to the new Signatories effective immediately upon filing with the Department. (Amended effective 3/26/96)

Section B. WITHDRAWAL FROM PARTICIPATION

Release from the Agreement may be obtained, provided that a Signatory is not in violation of the provisions of this Agreement and has fulfilled all of his or her obligations, including payment of any assessments or charges levied or imposed pursuant to this Agreement, under any of the following conditions:

1. By filing with the Department a written request for withdrawal prior to July 1 of the then current Marketing Season, with the release to become effective at the beginning of the succeeding Marketing Season.
2. Immediate withdrawal may be effected when a Signatory ceases to be a California Processor or Handler of Pistachios and gives notice thereof to the Board in writing.
3. The Department may terminate this Agreement with respect to any Signatory for cause as set forth in Article X hereof.

ARTICLE XI

COMPLIANCE OF CONTRACTING PARTIES

Section A. AGREEMENT TO COMPLY

Each Signatory to this Agreement hereby agrees to be bound by and to comply with all the provisions of this Agreement and any rules or regulations made by the Department pursuant to this Agreement and agrees to perform each and every act and obligation.

Section B. ADMINISTRATIVE PROCEDURES

The penalties, remedies, procedures and actions provided in Section 58930 and Article 21 of the Act, may be applied by the Department in instances of violation and complaints of violation of the provisions of this Agreement.

Section C. RIGHT OF INJUNCTION

In the event of a violation or threatened violation of this Agreement, or any rule or regulation made effective hereunder, the Department may request the Attorney General of California to file an action in the Superior Court of this State for an injunction.

Upon compliance with Section 527 of the Code of Civil Procedure of the State of California, the Court may issue a temporary restraining order and preliminary injunction as in other actions for injunctive relief; and upon trial of such action, if judgment be in favor of the plaintiff, the court shall permanently enjoin the defendant from further violations.

ARTICLE XII

SEPARABILITY

Section A. SEPARABILITY

If any section, sentence, clause or part of this Agreement is for any reason held to be invalid, or the applicability thereof to any person, circumstance or thing is held to be invalid, such decision shall not affect the remaining portions of this Agreement, and the invalid provision shall be reformed, if legally possible, so as to effectuate the intent of the provision to the maximum extent permissible by law.

ARTICLE XIII

EFFECTIVE TIME AND TERMINATION

Section A. EFFECTIVE TIME

This Agreement shall become effective on the date specified by the Department, and upon notification to the parties hereto in accordance with the provisions of Section 59111 of the Act or as Section 59111 may be hereafter amended, shall continue in effect until suspended or terminated by the Department, or by operation of law, in accordance with the provisions of the Act. At least once each five years a public hearing shall be held to determine whether the Agreement shall be continued. If the Department finds after the public hearing that the Agreement is effectuating the purposes of the Act, it shall continue the Agreement.

Section B. TERMINATION

The Department shall suspend or terminate this Agreement or any provision hereof whenever it finds that the Agreement does not tend to effectuate the declared purposes of the Act.

Section C. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT

Unless otherwise expressly provided in the notice of amendment, suspension or termination, no amendment, suspension or termination of this Agreement shall either (a) affect, waive or terminate any right, duty, obligation or liability which shall have arisen or may thereafter arise in connection with any other provision of this Agreement not so amended, suspended or terminated; or (b) release, condone or dismiss any violation of this Agreement occurring prior to the effective time of such amendment, suspension or termination; or (c) affect or impair any rights or remedies of the Department or of any person with respect to such violation; or (d) affect any liabilities pursuant to the provisions of this Agreement.